

**United States Department of Labor
Employees' Compensation Appeals Board**

WILLIAM T. HANLEY, Appellant

and

**U. S. POSTAL SERVICE, POST OFFICE,
Jersey City, NJ, Employer**

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**Docket No. 06-7
Issued: January 12, 2006**

Appearances:

Thomas Uliase, Esq., the for appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

DAVID S. GERSON, Judge

MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 29, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs hearing representative's decision dated May 20, 2005, which affirmed an April 13, 2004 schedule award decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award determination.

ISSUE

The issue is whether appellant has more than nine percent impairment of his right upper extremity, for which he received a schedule award.

FACTUAL HISTORY

On March 6, 2002 appellant, then a 62-year-old a mail handler, sustained a crush injury to his right third finger when a postal container wheel locked while he was pushing it.¹ On

¹ On April 21, 2003 appellant filed a notice of recurrence of alleging that on April 3, 2003 his finger swelled up. By decision dated July 23, 2003, the Office accepted appellant's claim for recurrence.

April 4, 2002 the Office accepted the claim for crush injury of the right middle finger, compound comminuted fracture of the distal phalanx, laceration avulsion, nail bed and nail plate and deep laceration, complex. Appellant received appropriate compensation benefits. On November 14, 2002 appellant completed a Form CA-7 for compensation for a schedule award.

By letter dated November 27, 2002, the Office requested that appellant's physician, Dr. Loka Reddy, a Board-certified plastic surgeon, utilize the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, A.M.A., *Guides*) (5th ed. 2001) and provide an assessment as to whether appellant had any impairment to the right upper extremity.

On December 5, 2002 the Office received a medical report from Dr. Reddy dated October 14, 2002. Dr. Reddy noted appellant's history of injury and treatment, which included a crush injury to his right middle finger and advised that appellant was complaining of pain and numbness at the tip of the right third finger and was also experiencing pain on pressure, especially when he was grasping a moderately heavy object or making a fist. His examination was limited to the right hand and advised that the distal part of the right third finger was healed with a linear scar, the interphalangeal (IP) joint was stiff with loss of range of movement of 20 degrees and indicated that appellant's passive range of movement was the same. Dr. Reddy noted that the distal interphalangeal (DIP) joint was also stiff and that there was a gap between the nail plate and the nail bed, which was probably due to a callus lifting the nail bed. Dr. Reddy opined that appellant had a flexion deformity with loss of range of movement of the DIP joint on the right third finger, arthralgia on direct pressure and heavy use of the hand and deformity of the nail. He further indicated that appellant's condition should be considered permanent as he did not expect any change in appellant's condition in the future. He noted that he utilized the A.M.A., *Guides* "as to the gap of the finger and leaving a space."

In a January 7, 2003 report, the Office medical adviser reviewed Dr. Reddy's October 14, 2002 report and determined that appellant had a nine percent impairment of his right upper extremity. He provided medical rationale to support his opinion and correlated his findings with the A.M.A., *Guides*.

By decision dated April 13, 2004, the Office awarded appellant compensation for 28.08 weeks for the period October 14, 2002 to April 28, 2003, representing a nine percent impairment of the right upper extremity.

By letter dated April 21, 2004, appellant's representative requested a hearing, which was held on February 23, 2005.

By decision dated May 20, 2005, an Office hearing representative affirmed the May 13, 2004 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ sets forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁴

ANALYSIS

Appellant submitted an October 14, 2002 report from his physician, Dr. Reddy, who utilized the A.M.A., *Guides*, provided examination and findings and opined that appellant had reached maximum medical improvement. However, he did not offer an impairment rating for schedule award purposes.

An Office medical adviser utilized Dr. Reddy's findings and applied the fifth edition of the A.M.A., *Guides* to find that appellant had a total impairment of nine percent to his right upper extremity. The Office medical adviser noted findings for the IP joint, which included stiffness with a loss of range of movement of 20 degrees. He referred to Figure 16-23⁵ and noted that would equate to 48 percent impairment of the finger. The Board notes that the Office medical adviser properly converted appellant's 48 percent of the finger into a 10 percent impairment of the right hand using Table 16-1.⁶ Using Table 16-2,⁷ he properly converted appellant's 10 percent hand impairment into a 9 percent impairment of the upper extremity. The Board therefore finds that he has no greater impairment than that awarded.

The Board finds that there is no other medical evidence of record, based upon a correct application of the A.M.A., *Guides*, to establish that appellant has more than a nine percent permanent impairment of the right upper extremity, for which he received a schedule award. Accordingly, the Board finds that appellant has no more than a nine percent permanent impairment of the right upper extremity.

On appeal, appellant's representative alleged that he was entitled to greater schedule award and referenced a medical report from Dr. David Weiss and asserted that appellant's claims should be doubled. However, in the present appeal, the medical evidence to which counsel refers

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ A.M.A., *Guides* (5th ed. 2001).

⁵ A.M.A., *Guides* 463, Figure 16-23.

⁶ A.M.A., *Guides* 438, Table 16-1.

⁷ A.M.A., *Guides* 439, Table 16-2.

in support of his argument for a greater schedule award and consolidation of the claim files, is not of record and, as such, the Board may not consider it on appeal.⁸ There is no evidence that the Office has issued a decision relative to counsel's contentions regarding the need to consolidate the claim files.⁹

CONCLUSION

The Board finds that appellant has no more than a nine percent permanent impairment of his right upper extremity, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 20, 2005 is affirmed.

Issued: January 12, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

⁸ See 20 C.F.R. § 501.2(c).

⁹ This decision does not preclude counsel from requesting consolidation of pertinent claim files pursuant to Office procedures upon return of the case record to the Office following issuance of this decision. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8 (February 2000).